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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8
9 Alexander Johnson,

No. CV-23-00580-TUC-RCC

10 Plaintiff,

ORDER

11 v.

12 Target,

13 Defendants.

14
15 Pending before the Court is pro se Plaintiff Alexander Johnson's Complaint (Doc.
16 1) and Application for Leave to Proceed In Forma Pauperis ("IFP Application") (Doc. 2).
17 Plaintiff alleges his employer, Target, violated the Americans with Disabilities Act
18 ("ADA") and Title VII of the Civil Rights Act. (Doc. 1 at 13.)

19 **I. IFP Application**

20 Generally, a party who files an action in federal district court must pay a filing fee.
21 28 U.S.C. § 1914(a). However, indigent plaintiffs may apply for a fee waiver. 28 U.S.C. §
22 1915. A court must determine whether the litigant is unable to pay the filing fee before
23 granting leave to proceed in forma pauperis. *See* 28 U.S.C. § 1915(a)(1).

24 Here, Plaintiff indicates that he has been terminated from employment with no other
25 source of income. (Doc. 2.) His monthly expenses total \$2,840 a month and his loss of
26 income is \$3,040 a month. (*Id.*) To support his claim that he is currently unpaid, he has
27 attached paystubs from June 29, 2023 and October 5, 2023 showing a total payment of \$0.
28 (Doc. 2-1.) Therefore, the Court finds that Plaintiff is unable to pay the filing fee and will

1 grant leave to proceed in forma pauperis.

2 **II. Statutory Screening of IFP Complaint**

3 A district court must screen and dismiss a complaint, or any portion of a complaint,
 4 filed in forma pauperis that "is frivolous, malicious, or fails to state a claim upon which
 5 relief may be granted; or seeks monetary relief from a defendant who is immune from such
 6 relief." 28 U.S.C. § 1915A(b)(1)–(2). The district court applies the same standard that is
 7 applied to a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss. *Watison v. Carter*,
 8 668 F.3d 1108, 1112 (9th Cir. 2012). Thus, the complaint must contain a "short and plain
 9 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).
 10 The pleading standard does not demand "'detailed factual allegations,' but it demands more
 11 than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*,
 12 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

13 To meet this standard, "a complaint must contain sufficient factual matter, accepted
 14 as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Twombly*, 550
 15 U.S. at 570). A claim to relief is plausible "when the plaintiff pleads factual content that
 16 allows the court to draw the reasonable inference that the defendant is liable for the
 17 misconduct alleged." *Id.* Therefore, "[t]hreadbare recitals of the elements of a cause of
 18 action, supported by mere conclusory statements, do not suffice." *Id.*

19 Nonetheless, the Ninth Circuit has instructed district courts to "continue to construe
 20 *pro se* filings liberally." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A "complaint
 21 [filed by a pro se litigant] 'must be held to less stringent standards than formal pleadings
 22 drafted by lawyers.'" *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). If the district
 23 court determines that a pleading might be cured by the allegation of other facts, a pro se
 24 litigant is entitled to an opportunity to amend a complaint before dismissal of the action.
 25 See *Lopez v. Smith*, 203 F.3d 1122, 1127–29 (9th Cir. 2000) (en banc).

26 **III. Plaintiff's Complaint**

27 Plaintiff's Complaint alleges that his employer, Target, violated the ADA and Title
 28 VII. (Doc. 1 at 3.) On March 9, 2023, Plaintiff filed a Charge of Discrimination with the

1 Equal Employment Opportunity Commission ("EEOC") alleging as follows:

2 I began my employment on or about February 1, 2022, with
3 my current position being Warehouse Associate.

4 On or about early July 2022, in my capacity as safety
5 advisor, I informed several employees to put on their safety
6 equipment which they refused to do until they were instructed
7 to do so by a non-Black advisor. During my employment, I was
8 subject to sexually disparaging comments, by a male co-
9 worker, when he told me to say something in Spanish, and
10 when I asked what it meant I was told he said I like Dick.

11 On or about July 9, 2022, I began having asthma attacks at
12 work, which led me to request an accommodation of working
13 in an area without dust, mold, extreme heat, excessive lifting,
14 and/or be assigned to another position, due to my disability.
15 My employer refused to provide me with an acceptable
16 accommodation, while providing accommodations for my
17 non-Black co-workers. I complained about the harassment, and
18 nothing was done to rectify the situation. On or about February
19 28, 2023, I was told to leave the building until I was able to
20 provide updated ADA paperwork.

21 I believe I was discriminated against because of my
22 disability, for requesting an accommodation, in violation of the
23 Americans with Disabilities Act of 1990, as amended. I further
24 believe I was discriminated against because of my race
25 (Black), my sex (male), for failure to conform to sex-
26 stereotypes, in violation Title VII of the Civil Rights of 1964,
27 as amended.

28 (*Id.* at 12–13.) Plaintiff also checked the box for retaliation in his Complaint, but he did not elaborate further on his allegations of retaliation. (*Id.* at 4.)

IV. Discussion

29 To establish a prima facie case of discrimination under the ADA, the plaintiff must
30 show that (1) he is disabled as defined by the ADA; (2) he is a qualified individual with a
31 disability; and (3) he was discriminated against because of his disability. *Smith v. Clark*
32 *Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013). The ADA defines a disability as "a
33 physical or mental impairment that substantially limits one or more major life activities of
34 such individual." 42 U.S.C. § 12102(1)(A). A qualified individual is someone who has the

1 "requisite skill, experience, education, and other job-related requirements of the position" 2 and "with or without accommodations, can perform the essential functions of the 3 employment position." *Anthony v. Trax Int'l Corp.*, 955 F.3d 1123, 1128 (9th Cir. 2020) 4 (quoting 29 C.F.R. § 1630.2(m)); 42 U.S.C. § 12111(8). The ADA places a "duty to 5 accommodate" on employers so long as it does not impose an undue hardship. *McAlindin* 6 *v. Cnty. of San Diego*, 192 F.3d 1226, 1236 (9th Cir. 1999) (citing 42 U.S.C. § 7 12112(b)(5)(A)). Next, when a plaintiff alleges retaliation under the ADA, he must 8 establish "(a) that he or she was engaged in a protected activity, (b) that he or she suffered 9 an adverse action, and (c) that there is a causal link between the two." *T.B. ex rel. Brenneise* 10 *v. San Diego Unified Sch. Dist.*, 806 F.3d 451, 473 (9th Cir. 2015) (quoting *Emeldi v. Univ.* 11 *of Ore.*, 673 F.3d 1218, 1223 (9th Cir. 2012)). As to the causal link, the plaintiff must show 12 but-for causation. *Id.*

13 Similarly, to establish the prima facie case for race- and sex- based discrimination 14 under Title VII, the plaintiff must show "(1) []he belongs to a protected class; (2) []he was 15 qualified for [his] position; (3) []he was subject to an adverse employment action; and (4) 16 similarly situated individuals outside [his] protected class were treated more favorably." 17 *Davis v. Team Elec. Co.*, 520 F.3d 1080, 1089 (9th Cir. 2008). When a plaintiff alleges 18 Title VII retaliation, he must establish that he was discriminated against "because he 19 opposed any practice made an unlawful employment practice by this subchapter[.]" 42 20 U.S.C. § 2000e-3; *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 360 (2013). Like 21 in an ADA retaliation claim, in a Title VII retaliation claim the defendant must "establish 22 that his or her protected activity was a but-for cause of the alleged adverse action by the 23 employer." *Nassar*, 570 U.S. at 362.

24 Here, the facts alleged do not present a plausible claim of discrimination under the 25 ADA. Plaintiff alleged he has asthma, he was a qualified individual for the position, and 26 he was terminated after requesting an accommodation. According to the facts alleged, 27 however, Plaintiff continued working without incident for more than six months after the 28 initial request. This suggests that either Plaintiff's asthma does not "substantially limit[]"

1 his work activities or his employer provided accommodations after the initial request.
2 Additionally, the facts regarding the termination of Plaintiff's employment are unclear. As
3 alleged, Plaintiff explained he was asked to leave the building until he could "provide
4 updated ADA paperwork." This fact muddles whether his employer intended to terminate
5 his employment or to accommodate his disability upon receiving up-to-date information.
6 There is nothing in the Complaint that explains whether Plaintiff subsequently provided
7 updated paperwork and was then terminated, or whether he was terminated at all. As such,
8 the Plaintiff has failed to present facts that suggest he suffered an adverse action as a result
9 of his requests for accommodation.

10 Next, Plaintiff failed to plausibly allege a case of either race- or sex-based
11 discrimination in violation of Title VII. Plaintiff does not allege any facts that he suffered
12 a cognizable adverse employment action because of his race or sex. Plaintiff presents one
13 instance during which he was "subjected to disparaging comments," however, it is not clear
14 that these were sex-based comments nor that these comments or any actions that resulted
15 from them were adverse employment actions. He talks about being asked to leave because
16 of his asthma accommodations not because of his "failure to conform to sex-stereotypes."
17 Furthermore, although Plaintiff alleges that his non-Black co-workers received
18 accommodations and that his employer failed to promote him and terminated his
19 employment because of his race, he offers no information beyond these conclusory
20 statements. The facts alleged do not discuss any potential for promotion or the reason for
21 his termination, or even that he was terminated, as discussed above.

22 Finally, Plaintiff has not presented any factual allegations regarding his retaliation
23 claim under the ADA or Title VII and therefore the Court will not assess it further.

24 **V. Leave to Amend**

25 If the district court determines that a pleading might be cured by the allegation of
26 other facts, a pro se litigant is entitled to an opportunity to amend a complaint before
27 dismissal of the action. *See Lopez*, 203 F.3d at 1127–29. The Court evaluates whether to
28 permit amendment by weighing "(1) bad faith; (2) undue delay; (3) prejudice to the

1 opposing party; (4) futility of amendment; and (5) whether plaintiff has previously
 2 amended his complaint." *W. Shoshone Nat'l Council v. Molini*, 951 F.2d 200, 204 (9th Cir.
 3 1991). "Leave to amend need not be given if a complaint, as amended, is subject to
 4 dismissal." *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989).

5 The Court does not believe Plaintiff acted in bad faith nor that allowing him to
 6 amend would cause undue delay or prejudice Defendant. Plaintiff has not previously
 7 amended his Complaint and, with the issues outlined above in mind, the Court believes it
 8 is possible for Plaintiff to allege further facts to survive screening.

9 Accordingly, the Court will permit an opportunity to amend. **Within thirty (30)**
 10 **days of the date of this Order, Plaintiff may file an Amended Complaint.** If he chooses
 11 to amend, Plaintiff must write short, plain statements telling the Court *for each claim*: (1)
 12 law right Plaintiff believes was violated; (2) the name of the Defendant who violated the
 13 law; (3) exactly what that Defendant did or failed to do that violated that particular law; (4)
 14 how the action or inaction of that Defendant is connected to the violation; and (5) what
 15 specific injury Plaintiff suffered because of that Defendant's conduct. *See Rizzo v. Goode*,
 16 423 U.S. 362, 371–72, 377 (1976). If Plaintiff fails to affirmatively link the conduct of the
 17 named Defendant with the specific injury suffered by Plaintiff, the allegations against
 18 Defendant will be dismissed for failure to state a claim. As indicated above, mere
 19 conclusory allegations that a Defendant has violated the law are not acceptable and will be
 20 dismissed. The Court is aware that Plaintiff is proceeding pro se. Plaintiff shall familiarize
 21 herself with the Federal Rules of Civil Procedure and Local Rules for the District of
 22 Arizona, both of which can be found on the Court's web site at www.azd.uscourts.gov.
 23 Plaintiff is also advised that a Handbook for Self-Represented Litigants is available on the
 24 Court's website at: <http://www.azd.uscourts.gov/handbook-self-represented-litigants>.

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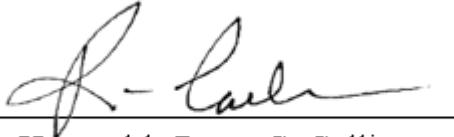
1 **VI. Conclusion**

2 For the foregoing reasons, **IT IS HEREBY ORDERED:**

3 (1) Plaintiff Alexander Johnson's Application to Proceed In Forma Pauperis is
4 **GRANTED.** (Doc. 2.)

5 (2) Plaintiff's Complaint is **DISMISSED** with leave to amend. (Doc. 1.) Plaintiff
6 may file a First Amended Complaint within thirty (30) days of the date of this
7 Order in compliance with the terms of this Order. If Plaintiff fails to file a First
8 Amended Complaint within thirty (30) days of the date of this Order, the Clerk
9 of Court shall, without further notice, enter a judgment dismissing this case with
10 prejudice.

11 Dated this 13th day of February, 2024.

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16 _____
17 Honorable Raner C. Collins
18 Senior United States District Judge